here refuses to commit itself upon the existence of the rule in Iowa, although it does say, "Two cases have been decided by this court in which the rule was applied" (page 650). Upon the whole, it does not appear that any decision can be found in Iowa wherein the rule was strictly applied and its binding force recognized, prior to the case of *Doyle* v. *Andis,* 102 N. W. Rep. 177, commented on ante p. 393.

EQUITY-MISTAKE OF FACT-NEGLIGENCE.—The defendant conveyed certain premises to the plaintiff who held a mortgage thereon, representing that otherwise the land was unencumbered. The plaintiff, after examining part of the records and finding no further encumbrance, discharged the mortgage. There was in fact a judgment lien duly recorded in the records not examined by him. In a suit to reinstate the mortgage on the ground of mistake of fact, *Held,* that the plaintiff was not entitled to equitable relief. *Farrell* v. *Bouck* (1904), — Neb. —, 101 N. W. Rep. 1018.

If a mistake of fact is material to the transaction wherein it occurs and does not result from the party's own violation of some legal duty, equity will, in the absence of adequate remedy at law, relieve from the consequences thereof either affirmatively or defensively. 2 POMEROY'S EQ. JUR., Sec. 852; *Fairbank* v. *Town of Rockingham,* 73 Vt. 124, 50 Atl. Rep. 802; *Barker* v. *Fitzgerald,* 105 Ill. App. 536, 68 N. E. Rep. 430; *MacKay* v. *Smith,* 27 Wash. 442, 67 Pac. Rep. 982. Mutual mistake or mistake of one party caused by the fraud of the other forms a basis for equitable relief. *Wilcox* v. *Lucas,* 121 Mass. 21, *Long* v. *Hartwell,* 34 N. J. L. 116; *North etc. Ry. Co.* v. *Swann,* 105 Pa. St. 555. It is sometimes stated that equity will not interfere if the complainant has been negligent. STORY'S EQ. JUR., Secs. 146, 147; SNELL'S EQUITY, 434; *Keith* v. *Brewster,* 114 Ga. 176, 181, 39 S. E. Rep. 850. Yet not every act of negligence will bar the door of the court. 2 POMEROY'S EQ. JUR., Sec. 856; *Kinney* v. *Ensminger,* 87 Ala. 340; *Bush* v. *Bush,* 33 Kan. 556; *Snyder* v. *Ives,* 42 Iowa 157, 162; *Emmert* v. *Thompson,* 49 Minn. 386, 52 N. W. Rep. 31. Thus it has been held that infirmity or gross ignorance will be a sufficient excuse for negligence. *Banta* v. *Vreeland,* 15 N. J. Eq. 103; *Schaffner* v. *Schilling,* 6 Mo. App. 42. It has been intimated that personal inquiry concerning a matter of public record constitutes sufficient diligence. *Conner* v. *Welch,* 51 Wis. 431, 442, 8 N. W. Rep. 260, 264. But the holding in the principal case is directly opposed to this and is, it seems, entirely reasonable.

EVIDENCE—PHOTOGRAPH—X-RAY.—Plaintiff, in an action for damages for personal injuries, offered in evidence a skiograph, or X-ray picture, for the purpose of showing that plaintiff's heart had been displaced, that the walls of the organ had become thick, and that an abnormally heavy tissue had formed on the walls of the heart. Over the objection of the defendant the skiograph was admitted in evidence and delivered to the jury for examination. *Held,* no error. *Chicago & J. Electric R. Co.* v. *Spence* (1904), — Ill. —, 72 N. E. Rep. 796.

Photographs are generally recognized as a permissible mode of testimony

when appropriate. A photograph must, however, be verified; not necessarily by the one who takes it, but by some one who can testify that it represents his idea of the subject. GREENLEAF, EVIDENCE, § 439 h; *Peoples Gaslight and Coke Co.* v. *Amphlett,* 93 Ill. App. 194; *Bedell* v. *Burky,* 76 Mich. 435; *Miller* v. *Louisville R. Co.,* 128 Ind. 97. Whether it is sufficiently verified is a preliminary question of fact for the trial judge, and not open to exception. *Blair* v. *Pelham,* 118 Mass. 420; *McGar* v. *Borough of Bristol,* 71 Conn. 652. But in this, as in other matters which may be left generally to the discretion of the trial judge, his discretion is not unlimited, and he is not at liberty to disregard the rules of law, by which the rights of the parties are governed. *DeForge* v. *N. Y., N. H. & H. R. R. Co.,* 178 Mass. 59. The discovery of the X-ray is comparatively recent. However, its utility and the reliability of its results are already so well known and established as scientific facts that courts ought to take judicial notice of them. *Wittenberg* v. *Onsgard,* 78 Minn. 342. And, although a picture produced by an X-ray cannot be verified as a true representation of the subject in the same way that a picture made by a camera can be, yet it should be admitted if properly taken. *Bruce* v. *Beall,* 99 Tenn. 303; *Miller* v. *Dumon,* 24 Wash. 648; *Mauch* v. *Hartford,* 112 Wis. 40; *Jameson* v. *Weld,* 93 Me. 345; *City of Geneva* v. *Burnett,* 65 Neb. 464, and note; *Carlson* v. *Benton,* 66 Neb. 486; *DeForge* v. *N. Y., N. H. & H. R. R. Co.,* supra. It has been said that "Unless precluded by some rule or principle of law, all that is logically probative is admissible." THAYER, PRELIMINARY TREATISE ON EVIDENCE, p. 265. It is the duty of courts to use every means for discovering the truth reasonably calculated to aid in that result. In the performance of that duty, every new discovery when it shall have passed the experimental stage, must necessarily be treated as a new aid in the administration of justice in the field covered by it. In that view, courts have shown no hesitation, in proper cases, in availing themselves of the art of photography by the X-ray process. See 1 MICH. LAW REV. 329; 56 *Albany Law Journal* 309.

EXECUTORS AND ADMINISTRATORS—LIABILITY OF EXECUTRIX TO ACCOUNT FOR TRUST ESTATE HELD BY HER TESTATOR.—Decedent left a trust estate in the hands of two sons for the benefit of a third son. Later the sons thus appointed as trustees died some years apart, the survivor leaving defendant as his executrix. The plaintiff corporation was appointed as substituted trustee by the court, and brought this suit against the executrix of the last surviving trustee for an accounting. She averred a lack of knowledge of the trust estate and an absence of accounts to show its condition. Part of said estate could be traced into the possession of the co-trustees, but not all. On these facts the lower court gave judgment for the entire trust fund with interest from the time of its inception. *Held,* the judgment must be reversed. *Farmers' Loan and Trust Co.* v. *Pendleton* (1904), — N. Y.—, 72 N. E. Rep. 508.

The judgment of reversal proceeded upon the doctrine that, as a general rule the trustee is not liable for a greater amount than he receives. *Staats* v. *Bergen,* 30 N. J. Law. 131. Nor is there any presumption, in the absence of